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Rachel Heimovics Braun, *Managing Editor*

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NOTES

A Second Eyewitness to Jim Conley's Actions:
The Leo Frank Case Revisited

by

Stephen Goldfarb*

That my vindication will eventually come I feel certain. Whether I will live to see it, I cannot tell. I am human enough to want to live to see it, for it is my right and due. But I may not. Still, one thing is sure. The truth cannot be executed. Vindication may be long in coming, but it will come.

—Leo M. Frank¹

The Leo Frank case began on April 26, 1913, with the murder of thirteen-year-old Mary Phagan in the National Pencil Company factory in downtown Atlanta. A month later Frank, the factory's manager, was indicted for the crime and, after a month-long trial during that summer, was found guilty and sentenced to be hanged. After nearly two years of unsuccessful appeals, Governor John M. Slaton commuted Frank's death sentence to life-in-prison on June 20, 1915. On August 16, 1915, Frank was kidnapped from the state prison in Milledgeville, transported to Cobb County, and lynched about dawn the following morning. He was thirty-one years old. Although there is little doubt that Frank did not murder Mary Phagan, information continues to come to light that further demonstrates his innocence.²

On September 10, 2003, as part of the Veterans History Project of the American Folklife Center of the Library of Congress, I sat in on an interview of Major Corbett W. Clark, United States

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Army, retired, at the Atlanta History Center. Clark had served in the Philippines during World War II and was awarded a Silver Star.³

After his interview, in response to a comment I made about researching the Frank case, Clark told me that he had known a woman employed in the National Pencil Company factory at the time of Mary Phagan's murder. Through his sister's marriage he had met Julia Fuss Bell, who was sixteen years old at the time of the crime.⁴

Major Clark told me that over the years he had visited with Julia Fuss Bell many times, and on more than one occasion she had told him that, on the day of Phagan's murder, she had been at work and witnessed the factory sweeper, Jim Conley, carrying the limp body of a white girl on the first floor of the building. When confronted, Conley threatened that should Julia repeat this story, he would kill her and her family. Clark's wife repeated and confirmed the story when I visited with them in their home on December 9, 2005. This was further confirmed in a videotaped interview that I had with Major Clark in his home on January 25, 2009. The salient section of that interview follows:

GOLDFARB: Major Clark, you have told me about her [Julia Fuss Bell's] link to the Leo Frank case. Would you . . . tell us as much as you can about what she knows about the Leo Frank case?

CLARK: Well, she told . . . us that she worked for the National Pencil Factory in Atlanta where Mary Phagan worked. She was a sixteen-year-old girl, and lots of girls worked there with the supervisor and the owner was Mr. Leo Frank. And she said that they remembered when Mary Phagan was killed, and the girls all knew that Leo Frank didn't do it, but he was accused of it. . . . So they said they remembered that they saw . . . the custodian [Jim Conley] take Mary Phagan's body down into the basement. And the custodian told the girls that if . . . they . . . told on him and get him in trouble . . . that he would kill any of 'em that told on him. . . .

CLARK: She saw Jim Conley take the body [of Mary Phagan] down to the basement. She [was] . . . always scared to death to tell anything about it.⁵

Leo Frank, 1914.

(Courtesy of the Cuba Archives of the Breman Museum, Atlanta.)

Julia Fuss Bell's account mirrors that of the factory's office boy Alonzo McClendon Mann. In 1982, five years after Bell's death, the Nashville *Tennessean* reported that Mann, in his eighties and in failing health (he died in 1985), had seen Jim Conley on the day of Mary Phagan's murder carrying her body toward the trap door that led to the basement. When confronted,

Conley threatened, "If you ever mention this, I'll kill you." Upon his return home Mann's mother admonished him "not to get involved." And for nearly seventy years, Mann held his tongue.⁶

The statements by Fuss and Mann directly contradict Jim Conley's testimony that had proved crucial to Frank's conviction. On August 4, 1913, during Frank's trial, Conley testified that he had helped Frank remove Phagan's body from the second floor of the factory, where Frank's office was located and where the murder was posited to have taken place, to the basement by way of the freight elevator. Were this so, then Conley could not have been on the first floor with Mary Phagan's body.

In an odd coincidence, both Julia Fuss and Alonzo Mann testified at the Frank trial on the same day, August 16, 1913. Although the trial record is lost, a relatively accurate reconstruction, apparently based on the documents associated with the appeals of the original trial, exists.⁷

The following summarizes Julia Fuss's testimony, first questioned by defense attorney Reuben Arnold and then cross-examined by prosecutor Hugh Dorsey:

Julia Fuss. Work on the fourth floor of the pencil factory; have never know [sic] anything wrong or immoral to be going on in Mr. Frank's office; talked with Jim Conley Wednesday morning [four days after murder of Mary Phagan]. He was sweeping around there and asked me to see the newspaper. As he read it he kinder [sic] grinned. He told me he believed Mr. Frank was just as innocent as the angels from Heaven. He was never known to tell the truth; would not believe on oath.

Cross-examined. Have never heard Mr. Frank accused of any act of immorality or familiarity with the girls in the factory.⁸ Jim Conley got two papers from me on Tuesday and Wednesday. I bought them. Jim always seemed to be kind of nervous or half drunk or something. He aroused my suspicions after he began to read the papers and grin about them and comment on them.⁹

Newspaper accounts of Fuss's testimony also include the following:

[Dorsey:] Did you see any blood on the [second] floor of the factory?

[Fuss:] Yes. Some of it had been chipped up, but some of it was left.

[Dorsey:] What do you think the spots were?

[Fuss:] I think they were paint.

[Dorsey:] Why?

[Fuss:] Because paint was used near there all the time.¹⁰

The summary of Mann's testimony later the same day is even briefer:

Alonzo Mann: Am office boy at the National Pencil Company. I left the factory at half-past 11 on April 26th [1913]. When I left there Miss Hall,¹¹ the stenographer . . . was in the office with Mr. Frank; never saw him bring any women into the factory and drink with them; have never seen [C. Brutus] Dalton there.¹²

Mann next enumerates the people whom he saw and several he did not see in the pencil factory on April 26. Jim Conley was not on either list.¹³

Neither Julia Fuss nor Alonzo Mann testified to seeing Jim Conley with the body of the murdered Mary Phagan on the first floor of the pencil factory. Conley's threats had effectively sealed the lips of both young people—in the case of Mann, with the aid of his mother.

In his seminal book on the case, Steve Oney argues that had Mann testified as to what he had seen on April 26, 1913, it would not have mattered since it "added little of probative value."¹⁴ However, if both Fuss and Mann had testified to what they had actually witnessed, it is possible that the jury would not have convicted Frank of murder. A guilty verdict required unanimity of the jurors, and just one dissenting vote induced by the reinforcing testimony would have produced a hung jury.

On the other hand, given the intense public frenzy over the case and the daily headlines in the press, it is probable that no testimony could have averted the jury from finding Frank guilty. At least today almost a century later as eyewitnesses provided links to the past by sharing memories expressed but long suppressed, we draw closer to fulfilling Frank's prediction that he would be vindicated and his innocence established.

The statement by Mann prompted the Anti-Defamation League of B'nai B'rith to apply for a pardon for Frank. After considering the application for a year, the Georgia Board of Pardons and Paroles denied the request. A second application for a pardon, not to absolve Frank of the murder of Mary Phagan but rather for the state of Georgia to admit its responsibility for Frank's lynching based on the state's failure to protect him, was approved in 1986. From a distance of more than a score of years, it is again impossible to determine if Fuss's collaborating statement would have made any difference in the granting of the earlier application for a posthumous pardon for Frank.¹⁵

NOTES

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¹ Quoted from the *Atlanta Journal*, November 22, 1914; cited in Steve Oney, *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank* (New York, 2003), 450.

² Scholarly study of the Frank case began with the Columbia University dissertation (1966) by Leonard Dinnerstein, revised and published as *The Leo Frank Case* (New York, 1966) and revised edition (Athens, GA, 2008). Oney's *And the Dead Shall Rise* adds substantial new material and is now the standard account of the case. See also Harry Golden, *A Little Girl is Dead* (New York, 1965).

³ See Corbett Clark Collection: Veterans History Project (American Folklife Center, Library of Congress) <http://lcweb2.loc.gov/diglib/vhp/bib/35139> (accessed August 7, 2009). Clark published an account of his Atlanta upbringing and wartime experiences in *From Hell to Surrender: The Story of a Young WWII Soldier Going to War in the Philippines* (Fayetteville, GA, 2002).

⁴ Julia Fuss Bell obituary, *Atlanta Constitution*, February 22, 1973. Fuss married John Boyd Bell, Sr. She was the mother-in-law of Major Clark's sister, Margaret Clark Bell, Margaret having married John Boyd Bell, Jr.

⁵ Interview with Corbett W. Clark conducted by author, January 25, 2009, with both video tape and transcript in the unprocessed manuscript collection, James G. Kenan Research Center, Atlanta History Center. When asked whether he was familiar with the name

Alonzo Mann, Major Clark responded, "No, I'm not familiar with that name." Clark's answer indicates that he was not just reading Mann's story into his remembrance of Fuss's remarks.

⁶ Leonard Dinnerstein, "The Fate of Leo Frank," *American Heritage*, October 1996, 106; Stephen Goldfarb, "Leo Max Frank (1884-1915)," in *Encyclopedia of American Jewish History*, ed. Stephen H. Norwood and Eunice G. Pollack, 1 (Santa Barbara, CA, 2008), 179. Subsequently, Mann made a sworn, videotaped statement while he was attached to a lie-detector, which confirmed his earlier statement to the press. For apparently the complete text of this sworn statement, see Mary Phagan [Kean], *The Murder of Little Mary Phagan* (Far Hills, NJ, 1987), 247-257.

⁷ John Davidson Lawson, ed., *American State Trials: A Collection of the Important and Interesting Criminal Trials Which Have Taken Place in the United States from the Beginning of Our Government to the Present Day*, 10 (St. Louis, 1914-1936), 182-414.

⁸ Among the main contentions of the prosecution was that Frank was notorious for approaching the young women and girls who worked for him for sexual favors and that he murdered Mary Phagan when she rebuffed his advances. The trial record shows that some female factory workers agreed; many more, like Julia Fuss, judged Frank's behavior toward his female employees as above reproach. Oney, *And the Dead Shall Rise*, 295-297.

⁹ Lawson, *American State Trials*, v. 10, 213-214.

¹⁰ *Atlanta Constitution*, August 16, 1913. The question here is whether the red spots on the second floor where Frank's office was located were Mary Phagan's blood or paint. Conley testified that Frank told him that when he tried to advance on Phagan, she backed off and hit her head against a piece of machinery while attempting to escape.

¹¹ Hattie Hall (not to be confused with the factory worker Corinthia Hall) testified that she was in the office until almost noon. She further testified that Frank requested that she remain "all afternoon and help him, that he was busy." As Oney comments "Neither of these actions was consistent with the thinking of a man planning a midday tryst." Oney, *And the Dead Shall Rise*, 279.

¹² Lawson, *American State Trials*, v. 10, 214. Apparently, Mann's testimony generated so little interest that there is no account of it in any Atlanta newspaper. This is unsurprising since the defense called over 150 witnesses. Most, like Mann, were character witnesses. Oney, *And the Dead Shall Rise*, 297. C. Brutus Dalton had testified earlier in the trial that he knew Frank and that he and Frank often consorted with women in the pencil factory on Saturdays. After the trial and sentencing of Frank to the death penalty, Dalton retracted this testimony. Oney, *And the Dead Shall Rise*, 258-259, 389-390.

¹³ Lawson, *American State Trials*, v. 10, 214.

¹⁴ Oney, *And the Dead Shall Rise*, 645.

¹⁵ *Ibid.*, 645, 648-49